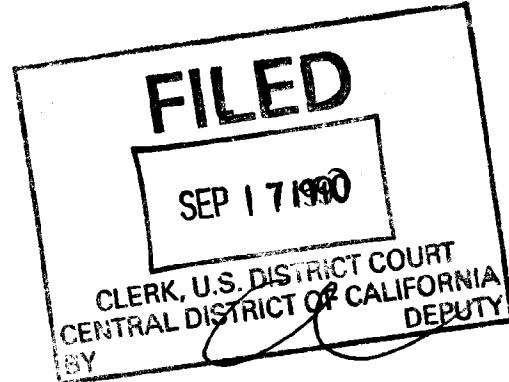


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2 UNITED STATES DISTRICT COURT
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4 CENTRAL DISTRICT OF CALIFORNIA
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4 HONORABLE EDWARD RAFEEDIE, JUDGE PRESIDING
5
6

7 UNITED STATES OF AMERICA,)
8 PLAINTIFF,)
9 VS.)
10 JUAN RAMON MATTA-BALLESTEROS)
11 DEL POZA, RUBEN ZUNO-ARCE,)
12 JUAN JOSE BERNABE-RAMIREZ,)
13 JAVIER VASQUEZ-VELASCO,)
14 DEFENDANTS.)
15
16

90-5000
NO. CR 87-422(F)-ER



16 REPORTER'S TRANSCRIPT OF PROCEEDINGS
17
18 LOS ANGELES, CALIFORNIA
19 MONDAY, JULY 16, 1990
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22
23
24
25

VELMA B. THOMAS, CSR, RPR
OFFICIAL COURT REPORTER
4255 WEST FIFTH STREET
SUITE 108
LOS ANGELES, CALIFORNIA 90020
(213) 386-4492
CSR NO. 2683

Title 28
Copy

APPEARANCES:

FOR PLAINTIFF:

ROBERT L. BROSIO
UNITED STATES ATTORNEY
MANUEL A. MEDRANO
ASSISTANT UNITED STATES ATTORNEY
JOHN L. CARLTON
ASSISTANT UNITED STATES ATTORNEY
1400 UNITED STATES COURTHOUSE
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

FOR DEFENDANT ZUNO-ARCE:

MITCHELL, SILBERBERG & KNUPP
BY: EDWARD M. MEDVENE, ESQ.
JAMES E. BLANCARTE, ESQ.
MARY E. FULGINITI, ESQ.
RONALD A. DI NICOLA, ESQ.
11388 WEST OLYMPIC BOULEVARD
LOS ANGELES, CALIFORNIA 90064

FOR DEFENDANT MATTIA:

MARTIN R. STOLAR, ESQ.
351 BROADWAY
NEW YORK, NEW YORK 10013

MICHAEL BURNS, ESQ.

ADOLFO Z. AGUILA-ROJAS, P.A.
ATTORNEY AT LAW
6780 CORAL WAY
SUITE 200
MIAMI, FLORIDA 33155

APPEARANCES (CONTINUED):

FOR DEFENDANT BERNABE-RAMIREZ:

MARY E. KELLY, ESQ.
MICHAEL MEZA, ESQ.
1901 AVENUE OF THE STARS
SUITE 1708
LOS ANGELES, CALIFORNIA 90067

FOR DEFENDANT VASQUEZ-VELASCO:

GREGORY NICOLAYSEN, ESQ.
8530 WILSHIRE BOULEVARD
SUITE 404
BEVERLY HILLS, CALIFORNIA 90211-4534

I N D E X

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LOS ANGELES, CALIFORNIA, MONDAY, JULY 16, 1990, 10:00 A.M.

1 THE CLERK: CRIMINAL 87-422(F), UNITED STATES OF
2 AMERICA VS. RUBEN ZUNO-ARCE AND OTHERS.

3 THE COURT: GOOD MORNING. LADIES AND GENTLEMEN,
4 IT IS MY PLEASURE THIS MORNING TO INSTRUCT YOU IN THE LAW
5 THAT YOU MUST APPLY IN THIS CASE. NOW THAT YOU HAVE HEARD
6 ALL THE EVIDENCE AND THE ARGUMENTS OF ATTORNEYS, IT IS THE
7 COURT'S DUTY TO INSTRUCT YOU ON THE LAW WHICH APPLIES TO
8 THIS CASE. A COPY OF THESE INSTRUCTIONS WILL BE AVAILABLE
9 IN THE JURY ROOM FOR YOU TO CONSULT IF YOU FIND IT
10 NECESSARY.

11 IT IS YOUR DUTY TO FIND THE FACTS FROM ALL THE
12 EVIDENCE IN THE CASE. YOU REMEMBER MY TELLING YOU THAT
13 YOU ARE FACT FINDERS. THAT IS BASICALLY WHAT YOU ARE HERE
14 FOR, TO RESOLVE WHAT THE FACTS ARE. AND TO THOSE FACTS
15 YOU WILL APPLY THE LAW AS I GIVE IT TO YOU. YOU MUST
16 FOLLOW THE LAW AS I GIVE IT TO YOU WHETHER YOU AGREE WITH
17 IT OR NOT.

18 AND YOU MUST NOT BE INFLUENCED BY ANY PERSONAL
19 LIKES OR DISLIKES, OPINIONS, PREJUDICES, OR SYMPATHY.
20 THAT MEANS THAT YOU MUST DECIDE THE CASE SOLELY ON THE
21 EVIDENCE BEFORE YOU. YOU WILL RECALL THAT YOU TOOK AN
22 OATH PROMISING TO DO SO AT THE BEGINNING OF THE CASE.

23 IN FOLLOWING MY INSTRUCTIONS YOU MUST FOLLOW ALL
24 OF THEM AND NOT SINGLE OUT SOME AND IGNORE OTHERS. THEY
25 ARE ALL EQUALLY IMPORTANT. AND YOU MUST NOT READ INTO

31-3

1 THESE INSTRUCTIONS OR INTO ANYTHING THE COURT MAY HAVE
2 SAID OR DONE ANY SUGGESTION AS TO WHAT VERDICT YOU SHOULD
3 RETURN. THAT IS A MATTER ENTIRELY UP TO YOU.

4 THE INDICTMENT IN THIS CASE ACCUSES EACH
5 DEFENDANT WITH CERTAIN CRIMES. EACH OF THE DEFENDANTS HAS
6 PLEADED NOT GUILTY TO THE CHARGES AGAINST HIM IN THE
7 INDICTMENT.

8 THE INDICTMENT IS NOT EVIDENCE. THE DEFENDANT
9 IS PRESUMED TO BE INNOCENT AND DOES NOT HAVE TO TESTIFY OR
10 PRESENT ANY EVIDENCE TO PROVE INNOCENCE. THE GOVERNMENT
11 HAS THE BURDEN OF PROVING EVERY ELEMENT OF EVERY CHARGE
12 BEYOND A REASONABLE DOUBT FOR EACH DEFENDANT. IF IT FAILS
13 TO DO SO, YOU MUST RETURN A NOT GUILTY VERDICT.

14 THE LAW PRESUMES A DEFENDANT TO BE INNOCENT OF
15 CRIME. THUS A DEFENDANT, ALTHOUGH ACCUSED, BEGINS THE
16 TRIAL WITH A CLEAN SLATE, WITH NO EVIDENCE AGAINST HIM.
17 AND THE LAW PERMITS NOTHING BUT LEGAL EVIDENCE PRESENTED
18 BEFORE THE JURY TO BE CONSIDERED IN SUPPORT OF ANY CHARGE
19 AGAINST THE ACCUSED. SO THE PRESUMPTION OF INNOCENCE
20 ALONE IS SUFFICIENT TO ACQUIT A DEFENDANT, UNLESS THE
21 JURORS ARE SATISFIED BEYOND A REASONABLE DOUBT OF THE
22 DEFENDANT'S GUILT AFTER CAREFUL AND IMPARTIAL
23 CONSIDERATION OF ALL THE EVIDENCE IN THE CASE.

24 IT IS NOT REQUIRED THAT THE GOVERNMENT PROVE
25 GUILT BEYOND ALL POSSIBLE DOUBT. THE TEST IS ONE OF

31-4

1 REASONABLE DOUBT. A REASONABLE DOUBT IS A DOUBT BASED
2 UPON REASON AND COMMON SENSE AND MAY ARISE FROM A CAREFUL
3 AND IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE OR FROM
4 LACK OF EVIDENCE. PROOF BEYOND A REASONABLE DOUBT IS
5 PROOF THAT LEAVES YOU FIRMLY CONVINCED THAT THE DEFENDANT
6 IS GUILTY.

7 IF, AFTER CAREFUL AND IMPARTIAL CONSIDERATION
8 WITH YOUR FELLOW JURORS OF ALL THE EVIDENCE, YOU ARE NOT
9 CONVINCED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS
10 GUILTY, IT IS YOUR DUTY TO FIND THE DEFENDANT NOT GUILTY.
11 ON THE OTHER HAND, IF, AFTER A CAREFUL AND IMPARTIAL
12 CONSIDERATION WITH YOUR FELLOW JURORS OF ALL THE EVIDENCE,
13 YOU ARE CONVINCED BEYOND A REASONABLE DOUBT THAT A
14 DEFENDANT IS GUILTY, IT IS YOUR DUTY TO FIND THAT
15 DEFENDANT GUILTY.

16 THE EVIDENCE FROM WHICH YOU ARE TO DECIDE WHAT
17 THE FACTS ARE CONSISTS OF THE SWORN TESTIMONY OF
18 WITNESSES, BOTH ON DIRECT AND CROSS-EXAMINATION,
19 REGARDLESS OF WHO CALLED THE WITNESS; THE EXHIBITS WHICH
20 HAVE BEEN RECEIVED INTO EVIDENCE; AND ANY FACTS TO WHICH
21 ALL THE LAWYERS HAVE AGREED OR STIPULATED.

22 THE LAW DOES NOT COMPEL A DEFENDANT IN A
23 CRIMINAL CASE TO TAKE THE WITNESS STAND AND TESTIFY, AND
24 NO PRESUMPTION OF GUILT MAY BE RAISED, AND NO INFERENCE OF
25 ANY KIND MAY BE DRAWN, FROM THE FAILURE OF A DEFENDANT TO

31-5

1 TESTIFY.

2 THE LAW NEVER IMPOSES UPON A DEFENDANT IN A
3 CRIMINAL CASE THE BURDEN OR DUTY OF CALLING ANY WITNESSES
4 OR PRODUCING ANY EVIDENCE.

5 IN REACHING YOUR VERDICT YOU MAY CONSIDER ONLY
6 THE TESTIMONY AND EXHIBITS RECEIVED INTO EVIDENCE.

7 CERTAIN THINGS ARE NOT EVIDENCE, AND YOU MAY NOT CONSIDER
8 THEM IN DECIDING WHAT THE FACTS ARE. I WILL LIST THEM FOR
9 YOU.

10 ARGUMENTS AND STATEMENTS BY LAWYERS ARE NOT
11 EVIDENCE. THE LAWYERS ARE NOT WITNESSES. WHAT THEY HAVE
12 SAID IN THEIR OPENING STATEMENTS, CLOSING ARGUMENTS AND AT
13 OTHER TIMES IS INTENDED TO HELP YOU INTERPRET THE
14 EVIDENCE, BUT IT IS NOT EVIDENCE. IF THE FACTS AS YOU
15 REMEMBER THEM DIFFER FROM THE WAY THE LAWYERS HAVE STATED
16 THEM, YOUR MEMORY OF THEM CONTROLS.

17 QUESTIONS AND OBJECTIONS BY LAWYERS ARE NOT
18 EVIDENCE. ATTORNEYS HAVE A DUTY TO THEIR CLIENTS TO
19 OBJECT WHEN THEY BELIEVE A QUESTION IS IMPROPER UNDER THE
20 RULES OF EVIDENCE. YOU SHOULD NOT BE INFLUENCED BY THE
21 OBJECTION OR BY THE COURT'S RULING ON IT.

22 TESTIMONY THAT HAS BEEN EXCLUDED OR STRICKEN, OR
23 THAT YOU HAVE BEEN INSTRUCTED TO DISREGARD, IS NOT
24 EVIDENCE AND MUST NOT BE CONSIDERED. IN ADDITION, SOME
25 TESTIMONY AND EXHIBITS HAVE BEEN RECEIVED ONLY FOR A

31-6

1 LIMITED PURPOSE. WHERE I HAVE GIVEN A LIMITING
2 INSTRUCTION, YOU MUST FOLLOW IT.

3 ANYTHING YOU MAY HAVE SEEN OR HEARD WHEN THE
4 COURT WAS NOT IN SESSION IS NOT EVIDENCE. YOU ARE TO
5 DECIDE THE CASE SOLELY ON THE EVIDENCE RECEIVED AT THE
6 TRIAL.

7 EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL.
8 DIRECT EVIDENCE IS DIRECT PROOF OF A FACT, SUCH AS
9 TESTIMONY OF AN EYEWITNESS. CIRCUMSTANTIAL EVIDENCE IS
10 INDIRECT EVIDENCE, THAT IS, PROOF OF A CHAIN OF FACTS FROM
11 WHICH YOU COULD FIND THAT ANOTHER FACT EXISTS, EVEN THOUGH
12 IT HAS NOT BEEN PROVED DIRECTLY. YOU ARE TO CONSIDER BOTH
13 KINDS OF EVIDENCE. THE LAW PERMITS YOU TO GIVE EQUAL
14 WEIGHT TO BOTH, BUT IT IS FOR YOU TO DECIDE HOW MUCH
15 WEIGHT TO GIVE TO ANY EVIDENCE.

16 IN DECIDING WHAT THE FACTS ARE, YOU MUST
17 CONSIDER ALL THE EVIDENCE. AND IN DOING THIS YOU MUST
18 DECIDE WHAT TESTIMONY TO BELIEVE AND WHAT TESTIMONY NOT TO
19 BELIEVE. YOU MAY DISBELIEVE ALL OR ANY PART OF ANY
20 WITNESSES' TESTIMONY. IN MAKING THAT DECISION YOU MAY
21 TAKE INTO ACCOUNT A NUMBER OF FACTORS, INCLUDING THE
22 FOLLOWING:

23 FIRST, WAS THE WITNESS ABLE TO SEE OR HEAR OR
24 KNOW THE THINGS ABOUT WHICH THAT WITNESS TESTIFIED?

25 HOW WELL WAS THE WITNESS ABLE TO RECALL AND

31-7

1 DESCRIBES THOSE THINGS?

2 WHAT WAS THE WITNESS'S MANNER WHILE TESTIFYING?

3 DID THE WITNESS HAVE AN INTEREST IN THE OUTCOME
4 OF THIS CASE OR ANY BIAS OR PREJUDICE CONCERNING ANY PARTY
5 OR ANY MATTER INVOLVED IN THE CASE?

6 HOW REASONABLE WAS THE WITNESS'S TESTIMONY
7 CONSIDERED IN LIGHT OF ALL THE EVIDENCE IN THE CASE?

8 WAS THE WITNESS'S TESTIMONY CONTRADICTED BY WHAT
9 THAT WITNESS HAS SAID OR DONE AT ANOTHER TIME OR BY THE
10 TESTIMONY OF OTHER WITNESSES OR BY OTHER EVIDENCE?

11 IF THE WITNESS IS SHOWN TO HAVE TESTIFIED
12 FALSELY CONCERNING ANY MATERIAL FACTS, YOU HAVE A RIGHT TO
13 DISTRUST THAT WITNESS'S TESTIMONY IN OTHER PARTICULARS,
14 AND YOU MAY REJECT ALL THE TESTIMONY OF THAT WITNESS OR
15 GIVE IT SUCH CREDIBILITY AS YOU MAY THINK IT DESERVES.

16 IN DECIDING WHETHER OR NOT TO BELIEVE A WITNESS,
17 KEEP IN MIND THAT PEOPLE SOMETIMES FORGET THINGS. YOU
18 NEED TO CONSIDER, THEREFORE, WHETHER A CONTRADICTION IS AN
19 INNOCENT LAPSE OF MEMORY OR AN INTENTIONAL FALSEHOOD, AND
20 THAT MAY DEPEND ON WHETHER IT HAS TO DO WITH AN IMPORTANT
21 FACT OR WITH ONLY A SMALL DETAIL.

22 THE WEIGHT OF THE EVIDENCE PRESENTED BY EACH
23 SIDE DOES NOT NECESSARILY DEPEND ON THE NUMBER OF
24 WITNESSES TESTIFYING ON ONE SIDE OR THE OTHER. YOU MUST
25 CONSIDER ALL THE EVIDENCE IN THE CASE, AND YOU MAY DECIDE

31-8

1 THAT THE TESTIMONY OF A SMALLER NUMBER OF WITNESSES ON ONE
2 SIDE HAS GREATER WEIGHT THAN THAT OF A LARGER NUMBER ON
3 THE OTHER.

4 YOU SHOULD JUDGE THE TESTIMONY OF A DEFENDANT
5 JUST AS YOU SHOULD JUDGE THE TESTIMONY OF ANY OTHER
6 WITNESS.

7 YOU HAVE HEARD TESTIMONY THAT WITNESSES HAVE
8 RECEIVED COMPENSATION, IMMUNITY, AND OTHER BENEFITS FROM
9 THE GOVERNMENT IN CONNECTION WITH THIS CASE. YOU SHOULD
10 EXAMINE THESE WITNESSES' TESTIMONY WITH GREATER CAUTION
11 THAN THAT OF ORDINARY WITNESSES. IN EVALUATING THAT
12 TESTIMONY YOU SHOULD CONSIDER THE EXTENT TO WHICH IT MAY
13 HAVE BEEN INFLUENCED BY THE RECEIPT OF COMPENSATION,
14 IMMUNITY, OR OTHER BENEFITS FROM THE GOVERNMENT.

15 YOU ARE NOT REQUIRED TO ACCEPT TESTIMONY EVEN
16 THOUGH THE TESTIMONY IS UNCONTRADICTED AND THE WITNESS IS
17 NOT IMPEACHED. YOU MAY DECIDE, BECAUSE OF THE WITNESS'S
18 BEARING AND DEMEANOR, OR BECAUSE OF THE INHERENT
19 IMPROBABILITY OF HIS TESTIMONY, OR FOR OTHER REASONS
20 SUFFICIENT TO YOU THAT SUCH TESTIMONY IS NOT WORTHY OF
21 BELIEF.

22 ON THE OTHER HAND, THE GOVERNMENT IS NOT
23 REQUIRED TO PROVE THE ESSENTIAL ELEMENTS OF THE OFFENSE AS
24 DEFINED IN THESE INSTRUCTIONS BY ANY PARTICULAR NUMBER OF
25 WITNESSES. THE TESTIMONY OF A SINGLE WITNESS MAY BE

31-9

1 SUFFICIENT TO CONVINCE YOU BEYOND A REASONABLE DOUBT OF
2 THE EXISTENCE OF AN ESSENTIAL ELEMENT OF THE OFFENSE
3 CHARGED IF YOU BELIEVE THAT THE WITNESS HAS TRUTHFULLY AND
4 ACCURATELY RELATED WHAT IN FACT OCCURRED.

5 YOU ARE HERE ONLY TO DETERMINE WHETHER EACH OF
6 THE DEFENDANTS IS GUILTY OR NOT GUILTY OF THE CHARGES
7 AGAINST HIM IN THE INDICTMENT. YOUR DETERMINATION MUST BE
8 MADE ONLY FROM THE EVIDENCE IN THE CASE. THE DEFENDANTS
9 ARE NOT ON TRIAL FOR ANY CONDUCT OR OFFENSE NOT CHARGED IN
10 THE INDICTMENT. YOU SHOULD CONSIDER EVIDENCE ABOUT THE
11 ACTS, STATEMENTS, AND INTENTIONS OF OTHERS OR EVIDENCE
12 THAT OTHER ACTS OF EACH OF THE DEFENDANTS ONLY AS THEY
13 RELATE TO THESE CHARGES AGAINST THAT DEFENDANT.

14 ONE OF THE WITNESSES, ENRIQUE PLACENCIA-AGUILAR,
15 TESTIFIED THAT A PHOTOGRAPH OF THE DEFENDANT JAVIER
16 VASQUEZ WAS SHOWN TO HIM BY THE DRUG ENFORCEMENT
17 ADMINISTRATION. THE DEA COLLECTS PICTURES OF MANY PEOPLE
18 FROM MANY DIFFERENT SOURCES AND FOR MANY DIFFERENT
19 PURPOSES. THE FACT THAT THE DEA HAD A PICTURE OF
20 MR. VASQUEZ DOES NOT MEAN THAT HE COMMITTED THIS OR ANY
21 OTHER CRIME.

22 NOW, A SEPARATE CRIME IS CHARGED AGAINST ONE OR
23 MORE OF THE DEFENDANTS IN EACH COUNT. THE CHARGES HAVE
24 BEEN JOINED FOR TRIAL. YOU MUST DECIDE THE CASE OF EACH
25 DEFENDANT ON EACH CRIME CHARGED AGAINST THAT DEFENDANT

31-10

1 SEPARATELY. YOUR VERDICT ON ANY COUNT AS TO ANY DEFENDANT
2 SHOULD NOT CONTROL YOUR VERDICT ON ANY OTHER COUNT OR AS
3 TO ANY OTHER DEFENDANT.

4 ALL OF THE INSTRUCTIONS APPLY TO EACH DEFENDANT
5 AND TO EACH COUNT UNLESS A SPECIFIC INSTRUCTION STATES
6 THAT IT APPLIES ONLY TO A SPECIFIC DEFENDANT OR A SPECIFIC
7 COUNT.

8 YOU ARE TO CONSIDER ONLY THE EVIDENCE IN THE
9 CASE. BUT IN YOUR CONSIDERATION OF THE EVIDENCE YOU ARE
10 NOT LIMITED TO THE BALD STATEMENTS OF THE WITNESSES. IN
11 OTHER WORDS, YOU ARE NOT LIMITED SOLELY TO WHAT YOU SEE
12 AND HEAR AS THE WITNESSES TESTIFY.

13 YOU ARE PERMITTED TO DRAW FROM FACTS WHICH YOU
14 FIND HAVE BEEN PROVED SUCH REASONABLE INFERENCES AS SEEM
15 JUSTIFIED IN THE LIGHT OF YOUR EXPERIENCE.

16 INFERENCES ARE DEDUCTIONS OR CONCLUSIONS WHICH
17 REASON AND COMMON SENSE LEAD THE JURY TO DRAW FROM FACTS
18 WHICH HAVE BEEN ESTABLISHED BY THE EVIDENCE IN THE CASE.

19 YOU HAVE HEARD TESTIMONY THAT EACH OF THE
20 DEFENDANTS MADE A STATEMENT. IT IS FOR YOU TO DECIDE
21 WHETHER THE DEFENDANT MADE THE STATEMENT AND, IF SO, HOW
22 MUCH WEIGHT TO GIVE TO IT. IN MAKING THOSE DECISIONS YOU
23 SHOULD CONSIDER ALL OF THE EVIDENCE ABOUT THE STATEMENT,
24 INCLUDING THE CIRCUMSTANCES UNDER WHICH THE DEFENDANT MAY
25 HAVE MADE IT.

31-11

1 YOU HAVE HEARD TESTIMONY FROM PERSONS DESCRIBED
2 AS EXPERTS. PERSONS WHO BY EDUCATION AND EXPERIENCE HAVE
3 BECOME EXPERT IN SOME FIELD MAY STATE THEIR OPINION ON
4 MATTERS IN THAT FIELD AND MAY ALSO STATE THEIR REASONS FOR
5 THE OPINION.

6 EXPERT TESTIMONY SHOULD BE JUDGED JUST LIKE ANY
7 OTHER TESTIMONY. YOU MAY ACCEPT IT OR REJECT AND GIVE IT
8 AS MUCH WEIGHT AS YOU THINK IT DESERVES, CONSIDERING THE
9 WITNESS'S EDUCATION AND EXPERIENCE, THE REASONS GIVEN FOR
10 THE OPINION, AND ALL OTHER EVIDENCE IN THE CASE.

11 CERTAIN CHARTS AND SUMMARIES HAVE BEEN RECEIVED
12 INTO EVIDENCE TO ILLUSTRATE FACTS BROUGHT OUT IN THE
13 TESTIMONY OF SOME WITNESSES. CHARTS AND SUMMARIES ARE
14 ONLY AS GOOD AS THE UNDERLYING EVIDENCE THAT SUPPORTS
15 THEM. YOU SHOULD, THEREFORE, GIVE THEM ONLY SUCH WEIGHT
16 AS YOU THINK THE UNDERLYING EVIDENCE DESERVES.

17 YOU WILL NOTE THAT THE INDICTMENT CHARGES THAT
18 THE OFFENSES WERE COMMITTED ON OR ABOUT CERTAIN DATES.
19 THE PROOF NEED NOT ESTABLISH WITH CERTAINTY THE EXACT DATE
20 OF THE ALLEGED OFFENSE. IT IS SUFFICIENT IF THE EVIDENCE
21 IN THE CASE ESTABLISHES BEYOND A REASONABLE DOUBT THAT THE
22 OFFENSES WERE COMMITTED ON A DATE OR DATES REASONABLY NEAR
23 THE DATES ALLEGED SO LONG AS SUCH DATE OR DATES WERE AFTER
24 OCTOBER 12, 1984.

25 I WILL NOW DESCRIBE FOR YOU THE CHARGES AGAINST

31-12

1 EACH DEFENDANT.

2 THE DEFENDANT JAVIER VASQUEZ-VELASCO IS CHARGED
3 IN COUNT 1 OF THE INDICTMENT WITH A VIOLENT ACT, BEING A
4 PRINCIPAL IN AND AIDING AND ABETTING THE MURDER OF JOHN
5 WALKER IN SUPPORT OF AN ENTERPRISE ENGAGED IN RACKETEERING
6 IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTIONS
7 1959 AND 2; AND IN COUNT 2 OF THE INDICTMENT WITH A
8 VIOLENT ACT, BEING A PRINCIPAL AND AIDING AND ABETTING THE
9 MURDER OF ALBERTO RADELAT IN SUPPORT OF AN ENTERPRISE
10 ENGAGED IN RACKETEERING IN VIOLATION OF THE SAME STATUTE.
11 SO DEFENDANT VASQUEZ IS CHARGED IN COUNTS 1 AND 2 ONLY.

12 NO OTHER DEFENDANT WAS CHARGED IN THOSE COUNTS.

13 THE DEFENDANT JUAN RAMON MATTABALLESTEROS IS
14 CHARGED IN COUNT 3 OF THE INDICTMENT WITH A VIOLENT ACT,
15 THE KIDNAPPING AND MURDER OF SPECIAL AGENT ENRIQUE
16 CAMARENA-SALAZAR IN SUPPORT OF AN ENTERPRISE ENGAGED IN
17 RACKETEERING IN VIOLATION OF TITLE 18, UNITED STATES CODE,
18 SECTIONS 1959 AND 2. THAT IS COUNT 3. IN COUNT 5 OF THE
19 INDICTMENT WITH CONSPIRACY TO KIDNAP A FEDERAL AGENT IN
20 VIOLATION OF TITLE 18, UNITED STATE CODE, SECTION 1201(C),
21 AND IN COUNT 6 OF THE INDICTMENT WITH AIDING AND ABETTING
22 THE KIDNAPPING OF A FEDERAL AGENT ON ACCOUNT OF THE
23 PERFORMANCE OF HIS OFFICIAL DUTIES IN VIOLATION OF 18,
24 UNITED STATES CODE, SECTIONS 1201(A)(5) AND 2. IN COUNT 7
25 OF THE INDICTMENT WITH MURDER OF SPECIAL AGENT ENRIQUE

31-13

1 CAMARENA-SALAZAR IN VIOLATION OF 18 UNITED STATES CODE
2 SECTIONS 1111(A), 1114, AND 2. SO MR. MATTA IS CHARGED IN
3 COUNT 3, COUNT 5, COUNT 6, AND COUNT 7.

4 THE DEFENDANT RUBEN ZUNO-ARCE IS CHARGED IN
5 COUNT 3 OF THE INDICTMENT WITH A VIOLENT ACT, THE
6 KIDNAPPING AND MURDER OF SPECIAL AGENT ENRIQUE CAMARENA-
7 SALAZAR IN SUPPORT OF AN ENTERPRISE ENGAGED IN
8 RACKETEERING IN VIOLATION OF 18 USC, SECTIONS 1959 AND 2;
9 IN COUNT 5 OF THE INDICTMENT WITH CONSPIRACY TO KIDNAP A
10 FEDERAL AGENT IN VIOLATION OF 18 USC, SECTION 1201(C); AND
11 IN COUNT 6 OF THE INDICTMENT WITH AIDING AND ABETTING THE
12 KIDNAPPING OF A FEDERAL AGENT ON ACCOUNT OF THE
13 PERFORMANCE OF HIS OFFICIAL DUTIES IN VIOLATION OF 18 USC
14 1201(A)(5) AND 2. THERE ARE THREE COUNTS AGAINST
15 MR. ZUNO.

16 THE DEFENDANT JUAN JOSE BERNABE-RAMIREZ IS
17 CHARGED IN COUNT 3 OF THE INDICTMENT WITH A VIOLENT ACT,
18 THE KIDNAPPING AND MURDER OF SPECIAL AGENT ENRIQUE
19 CAMARENA-SALAZAR, IN SUPPORT OF AN ENTERPRISE ENGAGED IN
20 RACKETEERING IN VIOLATION OF 18 USC, SECTIONS 1959 AND 2;
21 IN COUNT 4 OF THE INDICTMENT WITH A VIOLENT ACT IN SUPPORT
22 OF AN ENTERPRISE ENGAGED IN RACKETEERING IN VIOLATION OF
23 18 USC 1959 AND 2; IN COUNT 5 OF THE INDICTMENT WITH
24 CONSPIRACY TO KIDNAP A FEDERAL AGENT IN VIOLATION OF 18
25 USC, SECTION 1201(C); IN COUNT 6 OF THE INDICTMENT WITH

31-14

1 AIDING AND ABETTING THE KIDNAPPING OF A FEDERAL AGENT ON
2 ACCOUNT OF THE PERFORMANCE OF HIS OFFICIAL DUTIES IN
3 VIOLATION OF 18 USC 1201(A)(5) AND 2; IN COUNT 7 OF THE
4 INDICTMENT WITH THE MURDER OF SPECIAL AGENT ENRIQUE
5 CAMARENA-SALAZAR IN VIOLATION OF 18 USC 1111(A), 1114 AND
6 2; AND IN COUNT 8 OF THE INDICTMENT WITH BEING AN
7 ACCESSORY AFTER THE FACT TO THE KIDNAPPING AND MURDER OF
8 SPECIAL AGENT ENRIQUE CAMARENA-SALAZAR AND ALFREDO ZAVALA-
9 AVELAR IN VIOLATION OF 18 USC, SECTION 3.

10 NOW I AM GOING TO TELL YOU WHAT THESE COUNTS
11 ALLEGE. COUNTS 1, 2, 3 AND 4 OF THE INDICTMENT CHARGE
12 VIOLATIONS OF TITLE 18, UNITED STATES CODE, SECTION 1959,
13 VIOLENT ACTS IN SUPPORT OF AN ENTERPRISE ENGAGED IN
14 RACKETEERING.

15 TITLE 18, UNITED STATES CODE, SECTION 1959,
16 PROVIDES IN PERTINENT PART AS FOLLOWS:

17 "WHOEVER, FOR THE PURPOSE OF GAINING
18 ENTRANCE TO OR MAINTAINING OR INCREASING
19 POSITION IN AN ENTERPRISE ENGAGED IN
20 RACKETEERING ACTIVITY, MURDERS OR KIDNAPS OR
21 CONSPIRES SO TO DO SHALL BE GUILTY OF AN OFFENSE
22 AGAINST THE UNITED STATES."

23 IN ORDER TO ESTABLISH THE OFFENSES CHARGED IN
24 COUNTS 1, 2, 3 AND 4 OF THE INDICTMENT, THE FOLLOWING
25 ESSENTIAL ELEMENTS MUST BE ESTABLISHED BEYOND A REASONABLE

31-15

1 DOUBT:

2 FIRST: THE EXISTENCE OF AN ENTERPRISE ENGAGED
3 IN RACKETEERING ACTIVITY;

4 SECOND: THE ACTIVITIES OF THE ENTERPRISE
5 AFFECTED INTERSTATE OR FOREIGN COMMERCE;

6 THIRD: THE DEFENDANT ACTED WITH A PURPOSE TO
7 GAIN ENTRANCE TO OR MAINTAIN OR INCREASE POSITION IN THE
8 ENTERPRISE; AND

9 FOURTH: EITHER THE DEFENDANT PARTICIPATED IN
10 THE COMMISSION OF THE VIOLENT ACT AS CHARGED OR THE
11 DEFENDANT AIDED AND ABETTED IN THE COMMISSION OF THE
12 VIOLENT ACTS AS CHARGED OR THAT THE DEFENDANT CONSPIRED IN
13 THE COMMISSION OF THE VIOLENT ACTS AS CHARGED. THERE MUST
14 BE UNANIMOUS AGREEMENT AMONG THE JURORS THAT THE DEFENDANT
15 ENGAGED IN AT LEAST ONE OF THE TYPES OF CONDUCT DESCRIBED
16 ABOVE. THAT IS, EITHER HE WAS A DIRECT PARTICIPANT OR
17 AIDED AND ABETTED OTHERS IN COMMITTING THE VIOLENT ACTS OR
18 THAT HE CONSPIRED IN THE COMMISSION OF THE VIOLENT ACTS.

19 IN ORDER TO FIND THE DEFENDANT GUILTY ON COUNT 3
20 ON THE BASIS OF CONSPIRING IN THE COMMISSION OF THE
21 VIOLENT ACTS AS CHARGED, YOU MUST DECIDE WHETHER THE
22 CONSPIRACY CHARGED IN COUNT 3 EXISTED AND, IF IT DID
23 EXIST, WHO AT LEAST SOME OF ITS MEMBERS WERE. IF YOU FIND
24 THE CONSPIRACY CHARGED IN COUNT 3 DID NOT EXIST, THEN YOU
25 CANNOT RETURN A GUILTY VERDICT ON THIS COUNT BASED ON THE

31-16

1 CONDUCT OF CONSPIRING, EVEN THOUGH YOU MAY FIND THAT SOME
2 OTHER CONSPIRACY EXISTED.

3 SIMILARLY, IF YOU FIND THAT ANY DEFENDANT WAS
4 NOT A MEMBER OF THE CONSPIRACY CHARGED IN COUNT 3, THEN
5 YOU CANNOT RETURN A GUILTY VERDICT ON THIS COUNT BASED ON
6 THE CONDUCT OF CONSPIRING, EVEN THOUGH THE DEFENDANT MAY
7 HAVE BEEN A MEMBER OF SOME OTHER CONSPIRACY.

8 THE TERM ENTERPRISE AS DEFINED BY TITLE 18,
9 UNITED STATES CODE, SECTION 1959(B)(2), INCLUDES ANY
10 PARTNERSHIP, CORPORATION, ASSOCIATION, OR OTHER LEGAL
11 ENTITY, AND UNION OR GROUP OF INDIVIDUALS ASSOCIATED IN
12 FACT, ALTHOUGH NOT A LEGAL ENTITY, WHICH IS ENGAGED IN OR
13 THE ACTIVITIES OF WHICH AFFECT INTERSTATE OR FOREIGN
14 COMMERCE.

15 YOU MUST DECIDE WHETHER THE ENTERPRISE CHARGED
16 IN THE INDICTMENT EXISTED, AND, IF IT DID, WHO AT LEAST
17 SOME OF ITS MEMBERS WERE. IF YOU FIND THAT THE ENTERPRISE
18 CHARGED DID NOT EXIST, THEN YOU MUST RETURN A NOT GUILTY
19 VERDICT, EVEN THOUGH YOU MAY FIND THAT SOME OTHER
20 ENTERPRISE EXISTED.

21 SIMILARLY, IF YOU FIND THAT ANY DEFENDANT DID
22 NOT CONSPIRE TO COMMIT OR COMMIT THE VIOLENT ACTS CHARGED
23 IN COUNT 1 THROUGH 4 TO GAIN ENTRANCE TO OR TO MAINTAIN
24 OR INCREASE POSITION IN THE ENTERPRISE CHARGED, THEN YOU
25 MUST FIND THE DEFENDANT NOT GUILTY, EVEN THOUGH THAT

31-17

1 DEFENDANT MAY HAVE CONSPIRED TO COMMIT OR COMMITTED THOSE
2 ACTS IN CONNECTION WITH SOME OTHER ENTERPRISE NOT CHARGED.

3 EVEN IF YOU FIND THAT A PARTICULAR DEFENDANT WAS
4 A MEMBER OF THE CHARGED ENTERPRISE, THAT DOES NOT BY
5 ITSELF MEAN THAT THE DEFENDANT PARTICIPATED IN ANY WAY IN
6 THE KIDNAPPING AND MURDER OF ENRIQUE CAMARENA. YOU MUST,
7 IN ADDITION, SEPARATELY FIND THAT THE DEFENDANT EITHER
8 PARTICIPATED, AIDED AND ABETTED, OR CONSPIRED TO COMMIT
9 THE VIOLENT ACTS AS CHARGED. IF YOU DO NOT, YOU MUST FIND
10 THE DEFENDANT NOT GUILTY.

11 THE TERM RACKETEERING ACTIVITY AS DEFINED IN
12 TITLE 18, UNITED STATES CODE, SECTION 1961(1) INCLUDES THE
13 FELONIOUS, MANUFACTURE, IMPORTATION, RECEIVING,
14 CONCEALMENT, BUYING, SELLING, OR OTHERWISE DEALING IN
15 NARCOTIC OR OTHER DANGEROUS DRUGS PUNISHABLE UNDER ANY LAW
16 OF THE UNITED STATES.

17 YOU ARE INSTRUCTED THAT THE IMPORTATION,
18 SMUGGLING INTO THE UNITED STATES, POSSESSION, AND
19 DISTRIBUTION OF MARIJUANA AND COCAINE ARE PUNISHABLE UNDER
20 THE LAW OF THE UNITED STATES.

21 THE GOVERNMENT IS REQUIRED TO SHOW BEYOND A
22 REASONABLE DOUBT THAT THE ENTERPRISE IS ENGAGED IN OR
23 AFFECTS INTERSTATE COMMERCE OR FOREIGN COMMERCE.
24 INTERSTATE COMMERCE MEANS COMMERCE BETWEEN THE SEVERAL
25 STATES. FOREIGN COMMERCE MEANS COMMERCE BETWEEN TWO OR

31-18

1 MORE COUNTRIES.

2 INTENT ORDINARILY MAY NOT BE PROVED DIRECTLY
3 BECAUSE THERE IS NO WAY OF FATHOMING OR SCRUTINIZING THE
4 OPERATIONS OF THE HUMAN MIND. BUT YOU MAY INFER A
5 DEFENDANT'S INTENT FROM THE SURROUNDING CIRCUMSTANCES.
6 YOU MAY CONSIDER ANY STATEMENT MADE AND DONE OR OMITTED BY
7 THE DEFENDANT AND ALL OTHER FACTS AND CIRCUMSTANCES IN
8 EVIDENCE WHICH INDICATE HIS STATE OF MIND.

9 YOU MAY CONSIDER IT REASONABLE TO DRAW THE
10 INFERENCE AND FIND THAT A PERSON INTENDS THE NATURAL AND
11 PROBABLE CONSEQUENCES OF ACTS KNOWINGLY DONE OR KNOWINGLY
12 OMITTED. AS I HAVE SAID, IT IS ENTIRELY UP TO YOU TO
13 DECIDE WHAT FACTS TO FIND FROM THE EVIDENCE.

14 AN ACT IS DONE KNOWINGLY IF THE DEFENDANT IS
15 AWARE OF THE ACT AND DOES NOT ACT THROUGH IGNORANCE,
16 MISTAKE OR ACCIDENT. THE GOVERNMENT IS NOT REQUIRED TO
17 PROVE THAT THE DEFENDANT KNEW THAT HIS ACTS WERE UNLAWFUL.
18 YOU MAY CONSIDER EVIDENCE OF THE DEFENDANT'S WORDS OR ACTS
19 ALONG WITH ALL OTHER EVIDENCE IN DECIDING WHETHER THE
20 DEFENDANT ACTED KNOWINGLY.

21 TITLE 18, UNITED STATES CODE, SECTION 2 PROVIDES
22 IN PERTINENT PART AS FOLLOWS:

23 "WHOEVER COMMITS AN OFFENSE AGAINST THE
24 UNITED STATES OR AIDS, ABETS, COUNSELS,
25 COMMANDS, INDUCES, OR PROCURES ITS COMMISSION IS

31-19

1 PUNISHABLE AS A PRINCIPAL. AND WHOEVER
2 WILLFULLY CAUSES AN ACT TO BE DONE WHICH IS
3 DIRECTLY PERFORMED BY HIM OR ANOTHER WOULD BE AN
4 OFFENSE AGAINST THE UNITED STATES IS PUNISHABLE
5 AS A PRINCIPAL."

6 TO PROVE A DEFENDANT GUILTY OF AIDING AND
7 ABETTING THE GOVERNMENT MUST PROVE BEYOND A REASONABLE
8 DOUBT:

9 FIRST: THAT THE OFFENSE WAS COMMITTED;
10 SECOND: THAT THE DEFENDANT KNOWINGLY AND
11 INTENTIONALLY AIDED, COUNSELED, COMMANDED, INDUCED, OR
12 PROCURED ANOTHER PERSON OR PERSONS TO COMMIT THE OFFENSE;
13 AND

14 THIRD: THE DEFENDANT ACTED BEFORE THE CRIME WAS
15 COMPLETED.

16 IT IS NOT ENOUGH THAT THE DEFENDANT MERELY
17 ASSOCIATED WITH THE PERSON OR PERSONS WHO COMMITTED THE
18 CRIME OR WAS PRESENT AT THE SCENE OF THE CRIME OR
19 UNKNOWINGLY OR UNINTENTIONALLY DID THINGS THAT WERE
20 HELPFUL TO THE PRINCIPAL.

21 THE EVIDENCE MUST SHOW BEYOND A REASONABLE DOUBT
22 THAT THE DEFENDANT ACTED WITH THE KNOWLEDGE AND INTENTION
23 OF HELPING COMMIT THE CRIME.

24 A DEFENDANT MAY BE FOUND GUILTY OF CONSPIRING TO
25 VIOLATE TITLE 18, UNITED STATES CODE, SECTION 1959, AS

31-20

1 CHARGED IN COUNT 3. IN ORDER FOR A DEFENDANT TO BE FOUND
2 GUILTY OF THAT CHARGE THE GOVERNMENT MUST PROVE EACH OF
3 THE FOLLOWING ELEMENTS BEYOND A REASONABLE DOUBT:

4 FIRST: BEGINNING AT A TIME UNKNOWN AND
5 CONTINUING TO ON OR ABOUT FEBRUARY 9, 1985, THERE WAS AN
6 AGREEMENT TO COMMIT THE OFFENSE OR OBJECTS ALLEGED IN
7 COUNT 3: TO KIDNAP AND MURDER AN AGENT OF THE UNITED
8 STATES DRUG ENFORCEMENT AGENCY FOR THE PURPOSE OF
9 MAINTAINING OR INCREASING POSITION IN AN ENTERPRISE
10 ENGAGED IN RACKETEERING ACTIVITY;

11 SECOND: THE DEFENDANT WAS A MEMBER OF THE
12 CONSPIRACY AFTER THE LAW CAME INTO EFFECT ON OCTOBER 12,
13 1984, KNOWING OF AT LEAST ONE OF ITS OBJECTS AND INTENDING
14 TO HELP ACCOMPLISH IT;

15 THIRD: ONE OF THE MEMBERS OF THE CONSPIRACY
16 PERFORMED AT LEAST ONE OVERT ACT FOR THE PURPOSE OF
17 CARRYING OUT THE CONSPIRACY AFTER OCTOBER 12, 1984, AND
18 WHILE THE DEFENDANT WAS A MEMBER OF THE CONSPIRACY WITH
19 ALL OF YOU AGREEING ON A PARTICULAR OVERT ACT THAT YOU
20 FIND WAS COMMITTED.

21 I WILL DISCUSS WITH YOU BRIEFLY THE LAW RELATING
22 TO EACH OF THESE FOUR ELEMENTS -- TO EACH OF THESE
23 ELEMENTS.

24 A CONSPIRACY IS A KIND OF CRIMINAL
25 PARTNERSHIP -- AN AGREEMENT BETWEEN TWO OR MORE PERSONS TO

31-21

1 COMMIT ONE OR MORE CRIMES. THE CRIME IS THE AGREEMENT TO
2 DO SOMETHING UNLAWFUL; IT DOES NOT MATTER WHETHER THE
3 CRIME AGREED UPON WAS COMMITTED.

4 FOR A CONSPIRACY TO HAVE EXISTED, IT IS NOT
5 NECESSARY THAT THE CONSPIRATORS MADE A FORMAL AGREEMENT OR
6 THAT THEY AGREED ON EVERY DETAIL OF THE CONSPIRACY. BUT
7 IT IS NOT ENOUGH THAT THEY SIMPLY MET, DISCUSSED MATTERS
8 OF COMMON INTEREST, ACTED IN SIMILAR WAYS OR PERHAPS
9 HELPED ONE ANOTHER. YOU MUST FIND BEYOND A REASONABLE
10 DOUBT THAT THERE WAS A JOINT PLAN TO KIDNAP A FEDERAL
11 AGENT.

12 ONE BECOMES A MEMBER OF A CONSPIRACY BY
13 WILLFULLY PARTICIPATING IN THE UNLAWFUL PLAN WITH THE
14 INTENT TO ADVANCE OR FURTHER SOME OBJECT OR PURPOSE OF THE
15 CONSPIRACY, EVEN THOUGH THE PERSON DOES NOT HAVE FULL
16 KNOWLEDGE OF ALL THE DETAILS OF THE CONSPIRACY.
17 FURTHERMORE, ONE WHO WILLFULLY JOINS AN EXISTING
18 CONSPIRACY IS CHARGED WITH THE SAME RESPONSIBILITY AS IF
19 THAT PERSON HAD BEEN ONE OF THE ORIGINATORS OF IT.

20 ON THE OTHER HAND, ONE WHO HAS NO KNOWLEDGE OF A
21 CONSPIRACY, BUT HAPPENS TO ACT IN A WAY WHICH FURTHERS
22 SOME OBJECT OR PURPOSE OF THE CONSPIRACY, DOES NOT THEREBY
23 BECOME A MEMBER MERELY BY ASSOCIATING WITH ONE OR MORE
24 PERSONS WHO ARE CONSPIRATORS, NOR MERELY BY KNOWING OF THE
25 EXISTENCE OF A CONSPIRACY.

31-22

1 AN OVERT ACT DOES NOT ITSELF HAVE TO BE
2 UNLAWFUL. A LAWFUL ACT MAY BE AN ELEMENT OF A CONSPIRACY
3 IF IT WAS DONE FOR THE PURPOSE OF CARRYING OUT THE
4 CONSPIRACY. THE GOVERNMENT IS NOT REQUIRED TO PROVE THAT
5 THE DEFENDANT PERSONALLY DID ONE OF THE OVERT ACTS. ONCE
6 YOU HAVE DECIDED THAT THE DEFENDANT WAS A MEMBER OF A
7 CONSPIRACY, THE DEFENDANT IS RESPONSIBLE FOR WHAT OTHER
8 CONSPIRATORS SAID OR DID TO CARRY OUT THE CONSPIRACY,
9 WHETHER OR NOT THE DEFENDANT KNEW WHAT THEY SAID OR DID.

10 A CONSPIRACY MAY CONTINUE FOR A LONG PERIOD OF
11 TIME AND MAY INCLUDE THE PERFORMANCE OF MANY TRANSACTIONS.
12 IT IS NOT NECESSARY THAT ALL MEMBERS OF THE CONSPIRACY
13 JOIN IT AT THE SAME TIME, AND ONE MAY BECOME A MEMBER OF A
14 CONSPIRACY WITHOUT FULL KNOWLEDGE OF ALL THE DETAILS OF
15 THE UNLAWFUL SCHEME OR THE NAMES, IDENTITIES, OR LOCATIONS
16 OF ALL OF THE OTHER MEMBERS.

17 EVEN THOUGH A DEFENDANT DID NOT DIRECTLY
18 CONSPIRE WITH OTHER CONSPIRATORS IN THE OVERALL SCHEME,
19 THE DEFENDANT WOULD, IN EFFECT, HAVE AGREED TO PARTICIPATE
20 IN THE CONSPIRACY IF THE GOVERNMENT PROVES BEYOND A
21 REASONABLE DOUBT THAT THE DEFENDANT DIRECTLY CONSPIRED
22 WITH ONE OR MORE CONSPIRATORS TO CARRY OUT AT LEAST ONE OF
23 THE OBJECTS OF THE CONSPIRACY AND, SECOND, THAT THE
24 DEFENDANT KNEW OR HAD REASON TO KNOW THAT OTHER
25 CONSPIRATORS WERE INVOLVED WITH THOSE WITH WHOM THE

31-23

1 DEFENDANT DIRECTLY CONSPIRED AND, THREE, THE DEFENDANT HAD
2 REASON TO BELIEVE THAT WHATEVER BENEFITS THE DEFENDANT
3 MIGHT GET FROM THE CONSPIRACY WERE PROBABLY DEPENDENT UPON
4 THE SUCCESS OF THE ENTIRE VENTURE.

5 IT IS NO DEFENSE THAT A PERSON'S PARTICIPATION
6 IN A CONSPIRACY WAS MINOR OR FOR A SHORT PERIOD OF TIME.

7 COUNT 5 CHARGES DEFENDANTS JUAN RAMON MATTABALLESTEROS, RUBEN ZUNO-ARCE, AND JUAN JOSE BERNABERAMIREZ WITH CONSPIRACY TO KIDNAP A FEDERAL AGENT IN
10 VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 1201.

11 TITLE 18, UNITED STATES CODE, SECTION 1201,
12 PROVIDES IN PART AS FOLLOWS:

13 "WHOEVER UNLAWFULLY SEIZES, CONFINES,
14 KIDNAPS, ABDUCTS, OR CARRIES AWAY AND HOLDS FOR
15 RANSOM OR REWARD OR OTHERWISE ANY PERSON WHERE
16 THE PERSON IS AMONG THOSE OFFICERS AND EMPLOYEES
17 DESIGNATED IN SECTION 1114 OF THIS TITLE, SUCH
18 AS A SPECIAL AGENT OF THE DRUG ENFORCEMENT
19 ADMINISTRATION, AND ANY SUCH ACT AGAINST THE
20 PERSON IS DONE ON ACCOUNT OF THE PERFORMANCE OF
21 HIS OFFICIAL DUTIES SHALL BE GUILTY OF AN
22 OFFENSE AGAINST THE UNITED STATES.

23 "IF TWO OR MORE PERSONS CONSPIRE TO VIOLATE
24 THIS SECTION AND ONE OR MORE OF SUCH PERSONS DO
25 ANY OVERT ACT TO EFFECT THE OBJECT OF THE

31-24

1 CONSPIRACY, EACH SHALL BE GUILTY OF AN OFFENSE
2 AGAINST THE LAWS OF THE UNITED STATES."

3 IN REGARD TO COUNT 5, IN ORDER TO RETURN A
4 GUILTY VERDICT AS TO A PARTICULAR DEFENDANT, YOU MUST FIND
5 THAT THAT DEFENDANT WAS A MEMBER OF THE CONSPIRACY AFTER
6 THE LAW CAME INTO EFFECT ON OCTOBER 12, 1984, AND THAT AT
7 LEAST ONE MEMBER OF THE CONSPIRACY COMMITTED AN ACT IN
8 FURTHERANCE OF THE CONSPIRACY AFTER OCTOBER 12, 1984, AND
9 WHILE THE DEFENDANT WAS A MEMBER OF THE CONSPIRACY. IF
10 YOU DO NOT SO FIND, YOU MUST FIND THAT DEFENDANT NOT
11 GUILTY.

12 TO KIDNAP MEANS TO FORCIBLY AND UNLAWFULLY
13 ABDUCT OR STEAL OR CARRY AWAY A PERSON AND DETAIN OR KEEP
14 OR CONFINE HIM AGAINST HIS WILL.

15 YOU MUST DECIDE WHETHER THE CONSPIRACY CHARGED
16 IN COUNT 5 EXISTED AND, IF IT DID, WHO AT LEAST SOME OF
17 ITS MEMBERS WERE. IF YOU FIND THE CONSPIRACY CHARGED IN
18 COUNT 5 DID NOT EXIST, THEN YOU MUST RETURN A NOT GUILTY
19 VERDICT ON THAT COUNT, EVEN THOUGH YOU MAY FIND THAT SOME
20 OTHER CONSPIRACY EXISTED.

21 SIMILARLY, IF YOU FIND THAT ANY DEFENDANT WAS
22 NOT A MEMBER OF THE CONSPIRACY CHARGED IN COUNT 5, THEN
23 YOU MUST FIND THE DEFENDANT NOT GUILTY ON THAT COUNT, EVEN
24 THOUGH THE DEFENDANT MAY HAVE BEEN A MEMBER OF SOME OTHER
25 CONSPIRACY.

31-25

1 MERE PRESENCE AT THE SCENE OF THE CRIME AND
2 KNOWLEDGE THAT A CRIME IS BEING COMMITTED ARE NOT
3 SUFFICIENT TO ESTABLISH THAT THE DEFENDANT AIDED AND
4 ABETTED THE CRIME UNLESS YOU FIND BEYOND A REASONABLE
5 DOUBT THAT THE DEFENDANT WAS A PARTICIPANT AND NOT MERELY
6 A KNOWING SPECTATOR.

7 COUNT 6 CHARGES DEFENDANTS JUAN RAMON MATTABALLESTEROS, RUBEN ZUNO-ARCE AND JUAN JOSE BERNABE-RAMIREZ
8 WITH VIOLATING TITLE 18, UNITED STATES CODE, SECTION
9 1201(A)(5) AND SECTION 2 IN RELATION TO THE KIDNAPPING OF
10 DRUG ENFORCEMENT ADMINISTRATION SPECIAL AGENT ENRIQUE
11 CAMARENA-SALAZAR.

13 FIVE ELEMENTS ARE REQUIRED TO BE PROVED IN ORDER
14 TO ESTABLISH THAT A DEFENDANT COMMITTED THE OFFENSE OF
15 KIDNAP AS CHARGED IN COUNT 6:

16 FIRST: THE DEFENDANT PARTICIPATED OR AIDED AND
17 ABETTED THE SEIZURE, CONFINEMENT, KIDNAPPING OR CARRYING
18 AWAY OF ENRIQUE CAMARENA-SALAZAR;

19 SECOND: THAT THE DEFENDANT'S PARTICIPATION OR
20 AIDING AND ABETTING OCCURRED ON OR AFTER OCTOBER 12, 1984;

21 THIRD: AT THE TIME OF SUCH CONDUCT, ENRIQUE
22 CAMARENA-SALAZAR WAS A SPECIAL AGENT OF THE DRUG
23 ENFORCEMENT ADMINISTRATION;

24 FOURTH: THE DEFENDANT ACTED WHILE ENRIQUE
25 CAMARENA WAS ENGAGED IN, OR ON ACCOUNT OF, THE PERFORMANCE

31-26

1 OF OFFICIAL DUTIES; AND

2 FIFTH: THE DEFENDANTS HELD ENRIQUE CAMARENA FOR
3 RANSOM, REWARD, OR OTHER BENEFIT.

4 EACH MEMBER OF A CONSPIRACY IS RESPONSIBLE FOR
5 THE ACTIONS OF OTHER MEMBERS PERFORMED DURING THE COURSE
6 AND IN FURTHERANCE OF THE CONSPIRACY. IF ONE MEMBER OF A
7 CONSPIRACY COMMITS A CRIME IN FURTHERANCE OF A CONSPIRACY,
8 THE OTHER MEMBERS HAVE ALSO, UNDER THE LAW, COMMITTED THE
9 CRIME. THEREFORE, YOU MAY FIND THE DEFENDANT GUILTY OF
10 KIDNAPPING OF A DRUG ENFORCEMENT ADMINISTRATION SPECIAL
11 AGENT, AS CHARGED IN COUNT 6 OF THE INDICTMENT, IF THE
12 GOVERNMENT HAS PROVED EACH OF THE FOLLOWING ELEMENTS
13 BEYOND A REASONABLE DOUBT:

14 FIRST: THE DEFENDANT WAS A MEMBER OF THE
15 CONSPIRACY AFTER THE LAW CAME INTO EFFECT ON OCTOBER 12,
16 1984;

17 SECOND: A PERSON NAMED IN COUNT 6 OF THE
18 INDICTMENT AIDED, ABETTED, COUNSELED, INDUCED, PROCURED,
19 CAUSED OR OTHERWISE WILLFULLY PARTICIPATED IN UNLAWFULLY
20 SEIZING, CONFINING, KIDNAPPING OR CARRYING AWAY SPECIAL
21 AGENT ENRIQUE CAMARENA WHILE SPECIAL AGENT ENRIQUE
22 CAMARENA WAS ENGAGED IN, OR ON ACCOUNT OF, THE PERFORMANCE
23 OF HIS OFFICIAL DUTIES AFTER OCTOBER 12, 1984, AND WHILE
24 THE DEFENDANT WAS A MEMBER OF THE CONSPIRACY;

25 THIRD: THE PERSON WAS A MEMBER OF THE

31-27

1 CONSPIRACY CHARGED IN COUNT 6 OF THE INDICTMENT; AND
2 FOURTH: THE PERSON ACTED IN FURTHERANCE OF A
3 CONSPIRACY.

4 COUNT 7 CHARGES DEFENDANTS JUAN RAMON MATTABALLESTEROS AND JUAN JOSE BERNABE-RAMIREZ WITH MURDER AS A
5 CONSEQUENCE OF THEIR PARTICIPATION AND PERPETRATION OF
6 KIDNAPPING SPECIAL AGENT ENRIQUE CAMARENA.

7
8 UNITED STATES CODE, SECTION 1111 PROVIDES IN
9 PERTINENT PART:

10 "MURDER IS THE UNLAWFUL KILLING OF A HUMAN
11 BEING WITH MALICE AFORETHOUGHT. EVERY MURDER
12 COMMITTED IN THE PERPETRATION OF KIDNAPPING IS
13 MURDER IN THE FIRST DEGREE. WHOEVER IS GUILTY
14 OF MURDER IN THE FIRST DEGREE SHALL BE GUILTY OF
15 AN OFFENSE AGAINST THE UNITED STATES."

16 THE FOLLOWING ESSENTIAL ELEMENTS ARE REQUIRED TO
17 BE PROVED IN ORDER TO ESTABLISH THE OFFENSE OF FELONY
18 MURDER CHARGED IN COUNT 7 OF THE INDICTMENT:

19 FIRST: THAT DRUG ENFORCEMENT ADMINISTRATION
20 SPECIAL AGENT ENRIQUE CAMARENA WAS KILLED;

21 SECOND: THAT HE WAS KILLED WITH MALICE
22 AFORETHOUGHT;

23 THIRD: THAT SUCH ACT WAS DONE IN THE
24 PERPETRATION OF THE KIDNAPPING, UNLAWFUL SEIZURE, OR
25 CONFINEMENT OF AGENT ENRIQUE CAMARENA; AND

31-28

1 FOURTH: THAT THE DEFENDANT DIRECTLY
2 PARTICIPATED IN SUCH ACT OR ACTS OR AIDED AND ABETTED THE
3 COMMISSION OF SUCH ACTS WITH THE INTENT TO PERPETRATE THE
4 KIDNAPPING; AND

5 FIFTH: THAT THE DEFENDANT'S PARTICIPATION OR
6 AIDING AND ABETTING OCCURRED ON OR AFTER OCTOBER 12, 1984.

7 TO KILL WITH MALICE AFORETHOUGHT MEANS TO KILL
8 EITHER DELIBERATELY AND INTENTIONALLY OR RECKLESSLY WITH
9 EXTREME DISREGARD FOR HUMAN LIFE.

10 MALICE AFORETHOUGHT MAY BE INFERRED IF YOU FIND
11 THAT THE KILLING WAS COMMITTED DURING THE PERPETRATION OR
12 ATTEMPTED PERPETRATION OF THE KIDNAPPING OR CONFINEMENT
13 ALLEGED IN THE INDICTMENT.

14 COUNT 8 CHARGES DEFENDANT JUAN JOSE BERNABE-
15 RAMIREZ WITH BEING AN ACCESSORY AFTER THE FACT TO THE
16 KIDNAPPING AND MURDER OF SPECIAL AGENT ENRIQUE CAMARENA
17 AND MR. ALFREDO ZAVALA-AVELAR.

18 TITLE 18, UNITED STATES CODE, SECTION 3,
19 PROVIDES IN PERTINENT PART AS FOLLOWS:

20 "WHOEVER, KNOWING THAT AN OFFENSE AGAINST
21 THE UNITED STATES HAS BEEN COMMITTED, RECEIVES,
22 RELIEVES, COMFORTS OR ASSISTS THE OFFENDER IN
23 ORDER TO HINDER OR PREVENT HIS APPREHENSION,
24 TRIAL, OR PUNISHMENT IS AN ACCESSORY AFTER THE
25 FACT. AN ACCESSORY AFTER THE FACT SHALL BE

31-29

1 GUILTY OF AN OFFENSE AGAINST THE UNITED STATES."

2 TO ESTABLISH THE CRIME OF ACCESSORY AFTER THE
3 FACT IN COUNT 8 AS TO DEFENDANT JUAN JOSE BERNABE-RAMIREZ,
4 THE GOVERNMENT MUST PROVE THE FOLLOWING ELEMENTS BEYOND A
5 REASONABLE DOUBT:

6 FIRST: THAT HE KNEW THAT DEFENDANT RAFAEL CARO-
7 QUINTERO HAD PARTICIPATED IN OR CAUSED THE KIDNAPPING AND
8 MURDER OF SPECIAL AGENT ENRIQUE CAMARENA AND/OR
9 MR. ALFREDO ZAVALA;

10 SECOND: THAT HE HELPED RAFAEL CARO-QUINTERO
11 WITH THE INTENT TO HINDER OR PREVENT RAFAEL CARO-
12 QUINTERO'S APPREHENSION, TRIAL OR PUNISHMENT.

13 YOU HAVE HEARD EVIDENCE IN THIS CASE INVOLVING
14 ALLEGED DRUG DEALING BY CERTAIN DEFENDANTS. THE
15 DEFENDANTS ARE NOT ON TRIAL IN THIS CASE FOR THAT ALLEGED
16 CONDUCT. ALL OF THE -- ALL OF THIS EVIDENCE HAS BEEN
17 ADMITTED FOR LIMITED PURPOSES.

18 THEREFORE, THIS DRUG EVIDENCE OF CERTAIN
19 DEFENDANTS IS TO BE USED BY YOU FOR THE FOLLOWING PURPOSES
20 AND NO OTHER: TO PROVE: FIRST, THE EXISTENCE OF A DRUG
21 ENTERPRISE; SECOND, THE DEFENDANT'S RELATIONSHIP TO THE
22 DRUG ENTERPRISE; THIRD, EACH DEFENDANT'S MOTIVE; AND,
23 FOURTH, EACH DEFENDANT'S INTENT.

24 NOW, WHEN YOU RETIRE, YOU SHOULD SELECT ONE
25 MEMBER OF THE JURY AS YOUR FOREMAN. HE OR SHE WILL

31-30

1 PRESIDE OVER THE DELIBERATIONS AND SPEAK FOR YOU HERE IN
2 COURT.

3 YOU WILL THEN DISCUSS THE CASE WITH YOUR FELLOW
4 JURORS TO REACH AGREEMENT IF YOU CAN DO SO. YOUR VERDICT,
5 WHETHER GUILTY OR NOT GUILTY, MUST BE UNANIMOUS.

6 EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF,
7 BUT YOU SHOULD DO SO ONLY AFTER YOU HAVE CONSIDERED ALL
8 THE EVIDENCE, DISCUSSED IT FULLY WITH THE OTHER JURORS,
9 AND LISTENED TO THE VIEWS OF YOUR FELLOW JURORS.

10 DO NOT BE AFRAID TO CHANGE YOUR OPINION IF THE
11 DISCUSSION PERSUADES YOU THAT YOU SHOULD. BUT DO NOT COME
12 TO A DECISION SIMPLY BECAUSE OTHER JURORS THINK IT IS
13 RIGHT.

14 IT IS IMPORTANT THAT YOU ATTEMPT TO REACH A
15 UNANIMOUS VERDICT BUT, OF COURSE, ONLY IF EACH OF YOU CAN
16 DO SO AFTER HAVING MADE YOUR OWN CONSCIENTIOUS DECISION.
17 DO NOT CHANGE AN HONEST BELIEF ABOUT THE WEIGHT AND EFFECT
18 OF THE EVIDENCE SIMPLY TO REACH A VERDICT.

19 YOUR VERDICT MUST BE BASED SOLELY ON THE
20 EVIDENCE AND ON THE LAW AS I HAVE GIVEN IT TO YOU IN THESE
21 INSTRUCTIONS. HOWEVER, NOTHING THAT I HAVE SAID OR DONE
22 IS INTENDED TO SUGGEST WHAT YOUR VERDICT SHOULD BE. THAT
23 IS ENTIRELY FOR YOU TO DECIDE.

24 THE ARGUMENTS AND STATEMENTS OF THE ATTORNEYS
25 ARE NOT EVIDENCE. IF YOU REMEMBER THE FACTS DIFFERENTLY

31-31

1 FROM THE WAY THE ATTORNEYS HAVE STATED THEM, YOU SHOULD
2 BASE YOUR DECISION ON WHAT YOU REMEMBER.

3 SOME OF YOU HAVE TAKEN NOTES DURING THE TRIAL.
4 SUCH NOTES ARE ONLY FOR THE PERSONAL USE OF THE PERSON WHO
5 TOOK THEM.

6 UNDER THESE INSTRUCTIONS YOU MAY FIND ONE OR
7 MORE OF THE ACCUSED GUILTY OR NOT GUILTY, AS CHARGED. AND
8 AT ANY TIME DURING YOUR DELIBERATIONS, YOU MAY RETURN INTO
9 COURT YOUR VERDICT OF GUILTY OR NOT GUILTY AS TO ANY
10 DEFENDANT CONCERNING WHOM YOU HAVE UNANIMOUSLY AGREED.

11 THE PUNISHMENT PROVIDED BY LAW FOR THESE CRIMES
12 IS FOR THE COURT TO DECIDE. YOU MAY NOT CONSIDER
13 PUNISHMENT IN DECIDING WHETHER THE GOVERNMENT HAS PROVED
14 ITS CASE AGAINST THE DEFENDANT BEYOND A REASONABLE DOUBT.
15 THAT SHOULD NOT BE CONSIDERED NOR DISCUSSED. THAT IS,
16 PUNISHMENT SHOULD NOT BE CONSIDERED OR DISCUSSED BY THE
17 JURY.

18 AFTER YOU HAVE REACHED UNANIMOUS AGREEMENT ON A
19 VERDICT, YOUR FOREMAN WILL FILL IN THE FORM THAT HAS BEEN
20 GIVEN TO YOU, SIGN AND DATE IT, AND ADVISE THE MARSHAL OR
21 BAILIFF OUTSIDE YOUR DOOR THAT YOU ARE READY TO RETURN TO
22 THE COURTROOM.

23 WHAT YOU WILL HAVE IS A VERDICT FORM FOR EACH
24 DEFENDANT. IT WILL CONTAIN ON IT THE COUNTS THAT THAT
25 DEFENDANT IS CHARGED WITH. YOU WILL HAVE A PLACE -- A

31-32

1 BLANK LINE -- ON WHICH YOU WILL WRITE THE WORD GUILTY OR
2 NOT GUILTY AS CHARGED IN COUNT 2 OF THE INDICTMENT, GUILTY
3 OR NOT GUILTY AS CHARGED IN COUNT 5 OF THE INDICTMENT,
4 GUILTY OR NOT GUILTY AS CHARGED IN COUNT 6 OF THE
5 INDICTMENT -- WHATEVER COUNTS ARE ON A PARTICULAR VERDICT
6 FORM. SO THERE ARE FOUR VERDICT FORMS, ONE FOR EACH
7 DEFENDANT, AND EACH ONE CONTAINS THE CHARGES AGAINST THAT
8 PARTICULAR DEFENDANT.

9 WHEN YOU HAVE AGREED ON A VERDICT AS TO A
10 PARTICULAR DEFENDANT, ALL OF THE BLANKS SHOULD BE FILLED
11 IN AND IT SHOULD BE DATED AND SIGNED BY YOUR FOREMAN AND
12 THEN YOU SHALL RETURN WITH IT TO THIS COURTROOM. SO THERE
13 IS ONE FOR EACH DEFENDANT, AND THAT WILL BE WITH YOU IN
14 THE JURY ROOM.

15 IF IT BECOMES NECESSARY DURING YOUR
16 DELIBERATIONS TO COMMUNICATE WITH ME, YOU MAY SEND A NOTE
17 THROUGH THE MARSHAL OR BAILIFF, SIGNED BY YOUR FOREPERSON
18 OR BY ONE OR MORE MEMBERS OF THE JURY. NO MEMBER OF THE
19 JURY SHOULD EVER ATTEMPT TO COMMUNICATE WITH ME EXCEPT BY
20 A SIGNED WRITING, AND I WILL COMMUNICATE WITH ANY MEMBER
21 OF THE JURY ON ANYTHING CONCERNING THE CASE ONLY IN
22 WRITING, OR ORALLY HERE IN OPEN COURT.

23 REMEMBER THAT YOU ARE NOT TO TELL ANYONE,
24 INCLUDING ME, HOW THE JURY STANDS, NUMERICALLY OR
25 OTHERWISE -- THAT IS, YOU SHOULD NEVER SEND A NOTE OUT

31-33

1 TELLING ME HOW THE JURY STANDS, NUMERICALLY OR OTHERWISE;
2 THAT SHOULD NOT BE DONE -- ON THE QUESTION OF GUILT OF A
3 DEFENDANT, THAT IS, HOW THE JURY STANDS NUMERICALLY OR
4 OTHERWISE, ON THE QUESTION OF GUILT OF A DEFENDANT UNTIL
5 AFTER YOU HAVE REACHED A UNANIMOUS VERDICT OR HAVE BEEN
6 DISCHARGED.

7 NOW, THAT CONCLUDES THE INSTRUCTIONS THAT I AM
8 GOING TO GIVE YOU. I WANT TO SAY A FEW MORE THINGS BEFORE
9 WE -- LET'S SWEAR THE BAILIFFS TO TAKE CHARGE OF THE JURY
10 FIRST.

11 (THE BAILIFFS WERE SWORN BY THE CLERK.)

12 THE COURT: LADIES AND GENTLEMEN OF THE JURY,
13 ALL EXHIBITS THAT HAVE BEEN RECEIVED INTO EVIDENCE WILL BE
14 PROVIDED TO YOU IN THE JURY ROOM. THERE WILL BE THINGS
15 THAT WERE REFERRED TO DURING THE TESTIMONY AND DURING THE
16 TRIAL THAT WILL NOT BE IN THE JURY ROOM, AND YOU SHOULD
17 NOT ASK FOR THOSE THINGS BECAUSE THEY ARE NOT EXHIBITS.

18 FOR EXAMPLE, IF A WITNESS TESTIFIED CONCERNING A
19 REPORT, THE TESTIMONY REGARDING THE REPORT IS THE EVIDENCE
20 THAT YOU WILL CONSIDER. THE REPORT ITSELF MAY NOT BE IN
21 EVIDENCE, AND THEREFORE YOU SHOULD NOT REQUEST THINGS
22 BECAUSE WE INTEND TO GIVE YOU ALL THE EXHIBITS WHICH ARE
23 IN EVIDENCE THAT YOU NEED TO HAVE. SO THAT WILL EXPLAIN
24 WHY SOME THINGS ARE NOT THERE THAT YOU EXPECT TO SEE
25 BECAUSE YOU HEARD ABOUT THEM. THE EVIDENCE CONCERNING

31-34

1 THOSE THINGS IS THE TESTIMONY GIVEN BY THE WITNESSES
2 REGARDING THEM.

3 THE LAW USED TO REQUIRE US TO SEQUESTER JURIES
4 AFTER A CASE HAS BEEN SUBMITTED TO THEM. BY THAT I MEAN
5 TO KEEP YOU TOGETHER IN A HOTEL AND NOT ALLOW YOU TO GO
6 HOME. WE DON'T DO THAT ANYMORE. WE CAN DO IT, BUT I AM
7 NOT GOING TO IN THIS CASE PROVIDED THE JURY FOLLOWS
8 CERTAIN INSTRUCTIONS, AND THAT IS THE INSTRUCTIONS THAT I
9 HAVE GIVEN YOU THROUGHOUT THE TRIAL WILL STILL BE IN
10 EFFECT.

11 YOU MAY NOT DISCUSS THE CASE. YOU MAY DISCUSS
12 THE CASE WITH EACH OTHER ONLY IN THE JURY ROOM AND ONLY
13 WHEN ALL 12 JURORS ARE PRESENT, NOT SEPARATELY OR IN SMALL
14 GROUPS OR OVER THE TELEPHONE. THAT IS NOT PERMITTED.

15 YOU MAY NOT ALLOW ANYONE ELSE TO TALK TO YOU
16 ABOUT THE CASE OR DISCUSS THE CASE WITH ANYONE ELSE. THAT
17 MEANS PEOPLE AT HOME, MEMBERS OF YOUR FAMILY, FRIENDS,
18 RELATIVES, CHILDREN, OR ANYONE. YOU SHOULD NOT DISCUSS
19 THE CASE AT ALL.

20 YOU SHOULD NOT EXPRESS ANY OPINION OR CONCLUSION
21 ABOUT THE CASE EXCEPT IN THE JURY ROOM, AND ONLY THEN WHEN
22 ALL 12 JURORS ARE PRESENT.

23 UNDER THOSE CONDITIONS THE COURT WILL PERMIT YOU
24 TO SEPARATE AT THE END OF THE DAY AS WE HAVE THROUGHOUT
25 THE TRIAL.

31-35

1 IT IS VERY IMPORTANT ALSO THAT YOU CONTINUE TO
2 OBSERVE THE RULES ABOUT READING, HEARING, OR SEEING
3 ANYTHING ABOUT THIS CASE. IT IS ABSOLUTELY IMPORTANT THAT
4 YOU CONTINUE TO ABIDE BY THAT RULE.

5 NOW, THE INSTRUCTIONS WILL BE IN THE JURY ROOM
6 SO THAT YOU WILL HAVE THEM AVAILABLE IF YOU NEED TO REFER
7 TO THEM.

8 THERE IS NO TRIAL TRANSCRIPT. BY THAT I MEAN
9 THAT THE JURY WILL NOT BE PROVIDED WITH THE TRANSCRIPT OF
10 THE TESTIMONY THAT WAS GIVEN DURING THE TRIAL, ALTHOUGH
11 YOU MAY HAVE HEARD TRIAL TRANSCRIPTS OF TESTIMONY REFERRED
12 TO DURING THE TRIAL. YOU SHOULD RELY ON YOUR OWN
13 RECOLLECTION OF THE EVIDENCE AS YOU HEARD IT IN DECIDING
14 THIS CASE.

15 ORDINARILY I DON'T ENCOURAGE YOU, UNLESS IT IS
16 ABSOLUTELY NECESSARY, TO ASK TO HAVE TESTIMONY REREAD. IF
17 YOU FEEL IT IS ABSOLUTELY NECESSARY AND YOU HAVE NARROWED
18 THE SCOPE DOWN TO EXACTLY WHAT IT IS YOU MIGHT WANT OR
19 NEED, THE COURT WILL CONSIDER THAT. WE PREFER NOT TO HAVE
20 THAT IF WE CAN AVOID IT. BUT IF YOU THINK IT IS
21 NECESSARY, YOU MAY ASK THE COURT FOR THAT.

22 YOU WILL, OF COURSE, NOW BE GOING TO LUNCH
23 TOGETHER, AND THAT HAS BEEN ARRANGED. DURING THE TIME OF
24 YOUR DELIBERATIONS YOU WILL BE GOING TO LUNCH TOGETHER.

25 THERE WILL ALSO BE A COPY OF THE INDICTMENT

31-36

1 AVAILABLE FOR YOU TO SEE IF YOU NEED TO LOOK AT IT.

2 I THINK I HAVE COVERED EVERYTHING. I WISH YOU
3 WELL IN YOUR DELIBERATIONS. YOU HAVE BEEN A VERY
4 CONSCIENTIOUS JURY, ONE OF THE BEST I HAVE HAD HERE. YOU
5 HAVE PAID ATTENTION, AND YOU HAVE BEEN ON TIME, AND I
6 THINK YOU WILL CARRY OUT YOUR RESPONSIBILITY AND THE
7 REASON FOR YOUR BEING HERE.

8 YOU MAY BE EXCUSED, THE JURORS. THE ALTERNATES
9 WILL PLEASE REMAIN UNLESS YOU HAVE THINGS IN THE JURY ROOM
10 YOU WISH TO RETRIEVE. IF YOU DO, YOU MAY GO AND GET WHAT
11 YOU HAVE UP IN THE JURY ROOM AND BRING IT BACK HERE.

12 I WANT TO MEET WITH THE ALTERNATES TO THANK THEM
13 FOR THEIR SERVICE ON THIS CASE IN MY CHAMBERS.

14 YOU MAY BE EXCUSED.

15 (THE JURORS AND ALTERNATES LEFT THE
16 COURTROOM.)

17 MR. STOLAR: YOUR HONOR, I WANTED TO ASK THE
18 COURT WHEN YOU MEET WITH THE ALTERNATES THAT ARE BEING
19 DISCHARGED, WOULD THE COURT ADVISE THEM THAT THEY ARE FREE
20 TO SPEAK WITH US IF THEY WISH; THAT THEY HAVE NO
21 OBLIGATION TO. BUT I AND OTHER COUNSEL ARE CURIOUS TO
22 SPEAK WITH THEM, AND WE WOULD BE COURTEOUS TO THEM, YOUR
23 HONOR.

24 THE COURT: WE RECOMMEND AGAINST IT.

25 MR. MEDRANO: YOUR HONOR, ALSO TO MY

31-37

1 UNDERSTANDING THE ALTERNATES WILL BE ON CALL.

2 THE COURT: NO, THEY WILL NOT BE.

3 MR. MEDRANO: YOUR HONOR, WHAT HAPPENS IF ONE OF
4 THE JURORS TAKES ILL DURING DELIBERATIONS OR HAS AN
5 ACCIDENT OR WHATEVER? WHAT IS THE POSTURE OF THE COURT?

6 THE COURT: THE FEDERAL RULES REQUIRE THAT THESE
7 ALTERNATES BE DISCHARGED ONCE THE CASE HAS BEEN SUBMITTED,
8 AND THERE IS A RULE THAT PROVIDES THAT YOU MAY PROCEED
9 WITH ONE JUROR ABSENT IF SOMETHING HAPPENS.

10 MR. MEDRANO: VERY WELL, YOUR HONOR.

11 THE COURT: IF THE JUROR IS UNABLE TO CONTINUE.
12 THE ONLY OTHER WAY YOU CAN HOLD AN ALTERNATE IS IF
13 EVERYBODY SIGNED A WRITTEN STIPULATION AGREEING TO IT.

14 MR. MEDRANO: IN ADDITION, YOUR HONOR, I HAVE
15 TWO QUESTIONS FOR THE COURT. THERE ARE CERTAIN EXHIBITS
16 THAT ARE TYPICALLY HELD ONTO BY THE GOVERNMENT -- THE
17 FIREARMS FOR EXAMPLE AND FORENSIC EVIDENCE. I JUST WANTED
18 THE COURT'S GUIDANCE ON WHAT TO DO WITH THAT EVIDENCE AT
19 THIS TIME.

20 THE COURT: DO YOU MEAN THE FIREARM WITH THE "R"
21 ON IT?

22 MR. MEDRANO: YES.

23 THE COURT: I THINK THAT CAN BE SUBMITTED. I
24 THINK THE JURY IS ENTITLED TO SEE THAT.

25 MR. MEDRANO: HOW ABOUT THE FORENSIC EVIDENCE?

31-38

1 THE COURT: BLOOD?

2 MR. MEDRANO: NO, YOUR HONOR. THE SAMPLES OF
3 CLOTHING, THE SHROUD, THE BLINDFOLD, THINGS OF THAT
4 NATURE, YOUR HONOR. WHAT WOULD YOU LIKE TO DO WITH THOSE?

5 MR. STOLAR: I DON'T REALLY THINK THAT IS --

6 MR. MEDRANO: THERE IS A DISTINCT ODOR TO THEM.
7 THAT IS WHY I THOUGHT IT MIGHT BE PROBLEMATIC.

8 MR. STOLAR: THERE ARE PHOTOGRAPHS OF THOSE
9 ITEMS.

10 THE COURT: LET'S SAY THAT THOSE EXHIBITS NEED
11 NOT BE SENT IN UNLESS REQUESTED.

12 MR. MEDRANO: VERY WELL.

13 THE COURT: JUST HAVE A SEAT, AND I WILL HAVE
14 YOU FOLKS GO INTO CHAMBERS.

15 MR. MEDRANO: YOUR HONOR, JUST FOR THE RECORD,
16 THE GOVERNMENT'S POSITION, HAVING GIVEN SOME THOUGHT TO
17 THE ISSUE YOU RAISED PRELIMINARILY, IS THAT A HEARING
18 WOULD BE THE PREFERENCE OF THE GOVERNMENT ON LIMITED
19 QUESTIONING TO THE --

20 THE COURT: YOU SHOULD HAVE BROUGHT THAT TO THE
21 COURT'S ATTENTION.

22 MR. MEDRANO: VERY WELL.

23 MR. MEDVENE: IF THE COURT PLEASE, WE HAVE GIVEN
24 THE GOVERNMENT A COPY OF OUR EXHIBIT LIST. COULD WE GET A
25 COPY OF --

31-39

1 THE COURT: THE EXHIBITS SHOULD BE HELD UNTIL
2 EVERYBODY HAS AGREED ON ALL THE EXHIBITS WITH THE CLERK.
3 IF I DON'T HEAR ANYTHING FROM YOU ON THE RECORD, I WILL
4 DEEM THAT AS EVIDENCE THAT EVERYBODY HAS CONSENTED AND
5 HAVE CHECKED THE EXHIBITS AND MADE SURE THEY ARE
6 APPROPRIATE.

7 ALL RIGHT. WE ARE ADJOURNED, AND I WANT COUNSEL
8 TO REMAIN AVAILABLE UNTIL FURTHER NOTICE, THAT IS, WITHIN
9 THE BUILDING. NOTIFY THE CLERK WHERE YOU CAN BE REACHED.

10 MR. STOLAR: WHAT TIME IS LUNCH?

11 THE COURT: 12:00 O'CLOCK.

12 (PROCEEDINGS CONCLUDED.)

13 - - -
14 I HEREBY CERTIFY THAT THE FOREGOING IS A CORRECT
15 TRANSCRIPT OF THE PROCEEDINGS HAD ON THE RECORD
16 IN THE ABOVE-ENTITLED MATTER.

17
18 Velma B. Thomas 9/14/90
19 OFFICIAL REPORTER DATE